APPENDIX

APPENDIX A

Rule 8. Joinder of Offenses and of Defendants

(a) *Joinder of Offenses.* Two or more offenses may be charged in the same indictment or information in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

(b) *Joinder of Defendants.* Two or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count.

APPENDIX B

Instructions of the Court

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Count 1 of the indictment also charges a conspiracy to violate Section 1341, Title 18 of the United States Code, and Counts 6 through 13 charge eight specific violations of that section.

Section 1341, the relevant portions of which have been read to you, is known as the mail fraud statute. It makes unlawful the depositing in and receipt for or the causing of delivery by the United States mails any matter or thing for the purpose of executing a scheme or artifice to defraud. The mail fraud statute was enacted under the power of Congress to establish and operate the Post Office establishment of the United States. The purpose of the statute was to protect the public against intentional efforts

to despoil and prevent the Post Office from being used to carry them into effect.

The gist of this offense is the misuse of the mails to execute or attempt to execute a scheme to defraud. The existence of a scheme to defraud standing alone does not violate the statute, nor is it necessary that any person be defrauded. What is essential is the use of the mails in furtherance of such a scheme.

It is not necessary that the use of the mails be contemplated by the scheme or that defendant does any actual mailing or intends that the mails be used. It is sufficient to establish this element of crime if the mails were in fact used to carry out the scheme and that the use of the mails was reasonably foreseeable.

The mail matter need not disclose on its face a fraudulent representation or purpose, but need only be intended to assist in carrying out the scheme to defraud.

The mail fraud statute does not purport to reach all frauds, but is limited to those instances where the mails are used as a part of the execution of the fraud.

Before the defendant may be found guilty of mail fraud, the Government must prove beyond a reasonable doubt three essential elements:

One, that each of the defendants participated in a scheme to defraud;

Second, that their participation was accompanied by an intent to defraud; and

Third, that the mails were used in furtherance of that scheme or alleged scheme to defraud.

Section 1341 does not require that the defendant has personally deposited matter in the mail or has personally received the matter from the postal service.

Section 1341 imposes liability upon one who knowingly causes the mail to be used. An unintentional, insignificant

or incidental use of the mail is insufficient to support a conviction for violation of the mail fraud statutes, as is the use of the mail by a person or entity not associated with the scheme, unless such use of the mail could be reasonably foreseen as a likely step in the execution of the scheme.

It is not necessary that the use of the mails by the participants themselves be contemplated or that one of them do the actual mailing or that they consciously form in their minds a specific intent to use the mails in furtherance of the scheme. It is enough that the mails were in fact used to carry out the scheme and that such use by someone could reasonably be foreseen as a part of the execution of the scheme.

Use of the mails after the scheme had been completed or abandoned or for a purpose independent of the scheme is not a violation of the mail fraud statutes.

Good faith is a complete defense to the charge of violating the mail fraud statute. In determining whether defendant acted in good faith or with the intent to defraud, the jury should consider all the facts and circumstances in the case. If the jury finds that the defendant acted in good faith, he would not be guilty of a violation of the mail fraud statute.

The words "scheme" or "artifice" as used in the mail fraud statute mean any plan or course of action intended to defraud others or to obtain money or property by means of false or fraudulent pretenses, representations, or promises.

The bribery of a public official can be a scheme or artifice to defraud the public of public revenue, public property, public service.

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(Tr. 7457-7461)